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4.1 Permitted Use of the Consent Calendar

The consent calendar provides a juvenile and his or her parents a means to consent to the jurisdiction of the Family Division. In exchange, the court is limited in the disposition it may order. Thus, if the case is placed on the consent calendar, there will be no trial. Many courts require the juvenile to enter a plea of admission.*

MCR 5.932(B) states:

“If it appears that protective and supportive action by the court will serve the best interests of the juvenile and the public, the court may, on authorizing the filing of a petition or on receipt of a citation or appearance ticket, and with the consent of juvenile and parent, proceed informally to hear the matter on the consent calendar. . . .”

Formal notice is not required. MCR 5.932(B)(1).*

*See Sections 4.5–4.7, below, for the required procedures to accept a juvenile’s plea.

*See, however, Section 3.6.

4.2 Limited Disposition for Cases on Consent Calendar

*See Section 3.14, for a discussion of the requirements for the factfinding hearing.

*See Section 7.1 for these requirements.

If, after hearing, the court finds the accusation is true, it may dispose of the matter pursuant to MCL 712A.18; MSA 27.3178(598.18), except that the juvenile may not be removed from the custody of his or her parent. MCR 5.932(B)(2).*

If the court finds that the juvenile has violated the Michigan Vehicle Code, the court must fulfill the reporting requirements of MCL 712A.2b(d); MSA 27.3178(598.2b)(d), and MCL 257.732; MSA 9.2432. MCR 5.932(B)(2).*

4.3 Waiver of Rights That Attach When Case Is Placed on Formal Calendar

By agreeing to placement of the case on the consent calendar, the parties waive these rights:

- F formal notice of charges;
- F the right to an attorney;
- F the right to an appointment of an attorney at public expense;
- F the right to jury trial;
- F the right to a trial before a judge;
- F the presumption of innocence;
- F the presentation of proof beyond a reasonable doubt;
- F the right to testify on the juvenile's own behalf;
- F the privilege against self-incrimination (and the right to remain silent);
- F the right to present witnesses;
- F the right to confront and cross-examine the juvenile's accusers; and
- F the right to use the subpoena power of the court to compel attendance of witnesses.

See MCR 5.932(B)(1), 5.935(B)(4)(a)–(c), and 5.942(C), for a list of rights of a juvenile when his or her case is placed on the formal calendar.

4.4 Transfer of Case From Consent Calendar to Formal Calendar

MCR 5.932(B)(3) permits the court to transfer the case to the formal calendar if the juvenile fails to appear or violates conditions of the disposition ordered while the case was on the consent calendar. If the case is transferred to the formal calendar, the court must inform the juvenile of his or her right to an

attorney, to trial by judge or jury, and that any statement made by the juvenile may be used against him or her. See MCR 5.932(B)(1), 5.935(B)(4)(a)–(c), and 5.942(C) (these rules contain all of the procedural protections to which a juvenile is entitled in a case on the formal calendar; see Section 4.3, immediately above) and *In re Chapel*, 134 Mich App 308, 312–13 (1984) (full panoply of rights under court rules vests when case is placed on formal calendar). However, any statements made by the juvenile during informal proceedings may not be used at a trial on the formal calendar that is based on the same charge. MCR 5.932(B)(3).

For a detailed discussion of the required procedures in delinquency cases on the formal calendar, see, Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998), Chapter 11.

4.5 Plea Procedures

Many courts require the juvenile to enter a plea of admission before placing the case on the consent calendar. A juvenile may offer a plea of admission or no contest with the consent of the court, and the court may not accept the plea unless it is satisfied that the plea is accurate, voluntary, and understanding. MCR 5.941(A).

If the juvenile is charged solely with a violation of MCL 257.625(6); MSA 9.2325(6) (minor driving with any bodily alcohol content), the court must not accept a plea of guilty or nolo contendere to a violation of MCL 257.624a; MSA 9.2424(1) (transport or possession of open alcohol). MCL 257.624a(3); MSA 9.2424(1)(3).

4.6 Understanding, Voluntary, and Accurate Plea

Before accepting a plea of admission or no contest, the court must personally address the juvenile and must comply with the following rules. MCR 5.941(C).

F An Understanding Plea

To establish that the plea is understanding, the court must tell the juvenile:

“(a) the name of the offense charged,

“(b) the possible dispositions,

“(c) that if the plea is accepted, the juvenile will not have a trial of any kind, so the juvenile gives up the rights that would have been present at trial, including the right:

“(i) to trial by jury,

“(ii) to trial by the judge if the juvenile does not want trial by jury,

- “(iii) to be presumed innocent until proven guilty;
- “(iv) to have the petitioner or prosecutor prove guilt beyond a reasonable doubt,
- “(v) to have witnesses against the juvenile appear at trial,
- “(vi) to question the witnesses against the juvenile,
- “(vii) to have the court order any witnesses for the juvenile’s defense to appear at the trial,
- “(viii) to remain silent and not have the juvenile’s silence used against the juvenile, and
- “(ix) to testify at trial, if the juvenile wants to testify.”

MCR 5.941(C)(1)(a)–(c).

To establish a sufficient factual basis in the record for a determination that a plea is understandingly made, it may be necessary to ask questions of the juvenile. For example, the court may want to inquire about the juvenile’s age, extent of education, and grades in school. If the juvenile is represented by counsel, the court may want to ask whether he or she has had an adequate opportunity to discuss the plea with the attorney. Also, the court may ask if the juvenile is under the influence of drugs, alcohol, or medication, which might affect his or her ability to understand the proceedings.

F A Voluntary Plea

To establish that the plea is voluntary, the court must:

- F confirm any plea agreement on the record,* and
- F ask the juvenile if any promises have been made beyond those in a plea agreement or whether anyone has threatened him or her.

MCR 5.941(C)(2)(a)–(b).

F An Accurate Plea

To establish that the plea is accurate, the court must determine that there is support for a finding that the juvenile committed the offense. See *In re Bailey*, 137 Mich App 616, 623–24 (1984), citing *Guilty Plea Cases*, 395 Mich 96 (1975). The court may do this by:

- F questioning the juvenile or by other means if the plea is one of admission, or
- F using other means when the juvenile pleads no contest. The court must also state why a plea of no contest is appropriate.

MCR 5.941(C)(3)(a)–(b).

*See Section 4.3, above, for limitations on pleas to reduced charges in “drunk driving” cases.

MCL 257.910; MSA 9.2610, states that pleas of no contest are treated the same as guilty pleas under the Michigan Vehicle Code.

Pleas of no contest must be supported by a sufficient factual basis. Because the court rule requires that means other than questioning the juvenile must be used, resort to a police report, transcripts, or other documents, or an offer of proof by the prosecutor (if present) seems justified. The court should get the agreement of defense counsel (if present) if something other than actual testimony is used.

In addition, the court must state why a no-contest plea is appropriate. There has been a long-standing preference for direct testimony of the defendant to establish a factual basis for a plea. However, a number of appropriate reasons to allow acceptance of no-contest pleas have been recognized in criminal cases, including:

- F severe intoxication impairing the defendant's memory of details of the crime, and
- F minimizing civil liability.

See *Guilty Plea Cases*, 395 Mich 96, 134 (1975), and *People v Byrd*, 150 Mich App 624, 626–27 (1986) (civil liability). The ultimate test of whether a no-contest plea is appropriate is whether “the interest of the defendant and the proper administration of justice do not require interrogation of the defendant.” *Guilty Plea Cases*, 395 Mich 96, 132–33 (1975). The court may also wish to consider the treatment implications of a no-contest plea. Effective treatment may depend upon the perpetrator's willingness to admit that he or she committed the offense. If the respondent is unwilling to make this admission in court, he or she may also be reluctant to make an admission in therapy.

4.7 Parental Support for Plea

The court must also determine whether there is parental support for the plea. Under MCR 5.941(C)(4), the court must “inquire of the parent or guardian ad litem whether the parent or guardian ad litem knows of any reason why the court should not accept the plea tendered by the juvenile. Agreement or objection by the parent or guardian ad litem to a plea of admission or of no contest by a juvenile must be placed on the record if the parent or guardian ad litem is present.”

4.8 Use of the Juvenile Diversion Act in Juvenile Traffic Cases

The Family Division has the authority to establish or assist in the development of programs within the county to prevent delinquency and to provide services to act upon reports submitted to the court related to the behavior of juveniles who do not require formal court jurisdiction but otherwise fall within the provisions of MCL 712A.2(a); MSA 27.3178(598.2)(a) (criminal offenses, including criminal traffic violations). These services must be voluntarily accepted by the juvenile and his or her parents, guardian, or custodian. MCL

712A.2(e); MSA 27.3178(598.2)(e). Furthermore, the court may use informal procedures only if the court complies with the requirements of the Juvenile Diversion Act. MCL 712A.11(7); MSA 27.3178(598.11)(7).

Juveniles accused of traffic violations may be diverted from formal court procedures. See MCL 722.823(3); MSA 25.243(53)(3), and MCL 722.822(a); MSA 25.243(52)(a) (minors who commit certain assaultive offenses may not be diverted). A juvenile who does not comply with the terms of a diversion agreement may be subject to court jurisdiction. MCL 722.825(5); MSA 25.243(55)(5).

“Diversion” is defined as the placement that occurs when a formally recorded apprehension is made by a law enforcement agency for an act by a minor which, if a petition were filed with the court, would bring the minor within the formal jurisdiction of the court under MCL 712A.2(a); MSA 27.3178(598.2)(a). MCL 722.822(c); MSA 25.243(52). Instead of a petition being filed or authorized, however, either of the following occurs:

“(i) the minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued, or

“(ii) the minor and the minor’s parent, guardian, or custodian agree to work with a person or public or private organization or agency that will assist the minor and the minor’s family in resolving the problem that initiated the investigation.”

MCL 722.822(c)(i)–(ii); MSA 25.243(52)(c)(i)–(ii), and MCL 722.823(1)(a)–(b); MSA 25.243(53)(1)(a)–(b).

The Juvenile Diversion Act may be used by law enforcement officials and court intake workers prior to the filing of a petition or before the court authorizes a petition. MCL 722.823(1); MSA 25.243(53)(1), MCR 5.932(A)(2), and MCR 5.935(B)(3). However, once a petition is authorized, the act may no longer be used: the case must be placed on either the consent calendar or the formal calendar.

4.9 Factors to Determine Whether to Divert Juvenile

Before a minor is diverted, all of the following factors must be evaluated:

“(a) The nature of the alleged offense.

“(b) The minor’s age.

“(c) The nature of the problem that led to the alleged offense.

“(d) The minor’s character and conduct.

“(e) The minor’s behavior in school, family, and group settings.

“(f) Any prior diversion decisions made concerning the minor and the nature of the minor’s compliance with the diversion agreement.”

MCL 722.824(a)–(f); MSA 25.243(54)(a)–(f).

4.10 Victim’s Opportunity to Be Heard Regarding Diversion

The Juvenile Crime Victim’s Rights Act requires the court to provide the victim an opportunity to be heard regarding placement before the court places a juvenile in a pretrial diversion program for committing a violation that would be a “serious misdemeanor” if committed by an adult. “Serious misdemeanors” are listed in MCL 780.811(1); MSA 28.1287(811)(1), and include the following traffic-related offenses:

- F leaving the scene of a personal-injury accident, MCL 257.617a; MSA 9.2317(1);
- F operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual’s property or physical injury or death to another individual, MCL 257.625; MSA 9.2325;
- F operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, if the violation involves an accident resulting in damage to another individual’s property or physical injury or death to another individual, MCL 324.80176; MSA 13A.80176; and
- F a violation of a local ordinance substantially corresponding to a violation listed above.

The victim has the right to make a statement at the hearing, submit a written statement, or both. MCL 780.786(4); MSA 28.1287(786)(4). The victim may not be given the opportunity to be heard concerning diversion if the court intake worker diverts the juvenile following the preliminary inquiry, as MCL 780.786(4); MSA 28.1287(786)(4), explicitly mentions a hearing.

4.11 Diversion Conference

If the decision is made to divert the minor with a referral to a person or private or public organization or agency, a conference must first be held with the minor and the minor’s parent, guardian, or custodian to consider alternatives to the filing of a petition with the court or to the authorization of a petition. MCL 722.825(1); MSA 25.243(55)(1). The law enforcement official or court intake worker—depending upon who is holding the conference—must notify the minor and the minor’s parent, guardian, or custodian of the time and place of the proposed conference and:

“(a) That participation in the conference or resulting referral plan is voluntary.

*Note that Form JC 56 does not reflect this statutory provision.

“(b) That an attorney may accompany the minor and the minor’s parent, guardian, or custodian at the conference.

“(c) The alternative referral programs available and the criteria utilized to determine whether to file a petition with the court or to dispose of the petition with a referral.

“(d) That if diversion is agreed to and the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized.”*

MCL 722.825(1)(a)–(d); MSA 25.243(55)(1)(a)–(d).

This conference may not be held until after the questioning, if any, of the minor has been completed or after an investigation has been made concerning the alleged offense. Mention of, or promises concerning, diversion shall not be made by a law enforcement official or court intake worker in the presence of the minor or the minor’s parent, guardian, or custodian during any questioning of the minor. Information divulged by the minor during the conference or after the diversion is agreed to, but before a petition is filed with or authorized by the court, cannot be used against the minor. MCL 722.825(2); MSA 25.243(55)(2).

4.12 Diversion Agreement

See Form JC 55. Note that this form does not reflect the agreement but is used to document that a minor was diverted for an offense.

If a diversion agreement is reached that imposes conditions on the minor, the terms of the agreement must be set forth in writing, dated, and signed by the law enforcement official or court intake worker, the minor, and the minor’s parent, guardian, or custodian. MCL 722.825(3); MSA 25.243(55)(3).*

If a conference is held but an agreement is not reached, a petition may be filed with the court as provided by law and a petition may be authorized as provided by law. If the law enforcement official or court intake worker decides to file a petition, it must be filed no later than 30 days after the conference. MCL 722.825(4); MSA 25.243(55)(4).

4.13 Revocation of Diversion Agreement

If the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized by the court. MCL 722.825(1)(d); MSA 25.243(55)(1)(d).

However, “[i]f the minor fails to comply with the terms of the diversion agreement and the referral plan, the law enforcement official or court intake worker may revoke the diversion agreement. If the diversion agreement is revoked, a petition may be filed with the court as provided by law and a petition may be authorized by the court as provided by law.” MCL 722.825(5); MSA 25.243(55)(5).

4.14 Required Information

Whenever a law enforcement official or court intake worker diverts a minor, the following information must be filed with the Family Division in the county in which the minor resides or is found:

“(a) The minor’s name, address, and date of birth.

“(b) The act or offense for which the minor was apprehended.

“(c) The date and place of the act or offense for which the minor was apprehended.

“(d) The diversion decision made, whether referred or released.

“(e) The nature of the minor’s compliance with the diversion agreement.”

MCL 722.826(1)(a)–(e); MSA 25.243(56)(1)(a)–(e).

If a diversion agreement is revoked, the law enforcement official or court intake worker must file with the court in which the information described above is filed the fact of and reasons for the revocation. MCL 722.826(2); MSA 25.243(56)(2).

4.15 Confidentiality and Destruction of Required Information

The Family Division must keep diversion information in a separate confidential record. MCL 722.827; MSA 25.243(57). This record is open to law enforcement agencies and court intake workers and, by order of the court, to persons having a legitimate interest, but only for the purpose of deciding whether to divert a minor. MCL 722.828(1)–(2), 722.829(1); MSA 25.243(58)(1)–(2), 25.243(59)(1). These records must be destroyed within 28 days after the minor becomes 17 years of age. MCL 722.828(3); MSA 25.243(58)(3), and MCR 5.925(E)(2)(b). If the case is diverted and the juvenile complies with the diversion agreement, no adjudication occurs. Because no adjudication occurs, no report of a traffic offense need be made to the Secretary of State.

